MOTION FILED APR 28 1952

IN THE

Supreme Court of the United States

October Term, 1950

No. 5, Original

STATE OF NEW JERSEY,
Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

MOTION OF DEFENDANT STATE OF NEW YORK FOR LEAVE TO FILE MEMORANDUM IN SUPPORT OF PETITION OF DEFENDANT CITY OF NEW YORK TO AMEND DECREE, AND MEMORANDUM IN SUPPORT OF PETITION

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MOTION OF DEFENDANT STATE OF NEW YORK FOR LEAVE TO FILE ANNEXED MEMORANDUM IN SUPPORT OF PETITION OF DEFENDANT CITY OF NEW YORK FOR MODIFICATION OF DECREE

Now comes the defendant, State of New York, by Nathaniel L. Goldstein, its Attorney General, and asks leave to file the annexed memorandum in support of the application of the defendant, City of New York, to modify the decree of this Court, entered May 25, 1931, so as to provide for an increase of the diversion by the City of New York of the waters of the Delaware River or its tributaries from the equivalent of 440 million gallons of water daily to the equivalent of 800 million gallons of water daily, and so as to provide a modified water release formula as set forth in

paragraph "21" of the instant petition of the defendant, City of New York.

April 22, 1952.

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STATE OF NEW YORK and CITY OF NEW YORK,
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MEMORANDUM OF THE DEFENDANT, STATE OF NEW YORK, IN SUPPORT OF THE PETITION OF THE DEFENDANT, CITY OF NEW YORK, FOR MODIFICATION OF DECREE

In the performance of its duty to control and conserve its water resources for the benefit of all its inhabitants, the State of New York has enacted legislation regulating the taking of public water supplies by municipalities and others (N. Y. Conservation Law, Article XI). The administration of the regulatory legislation is vested in the Water Power and Control Commission of the State of New York, an agency of the State, consisting of its Conservation Commissioner, Superintendent of Public Works and Attorney General.

By this enactment, no municipal corporation has any power to take or acquire a water supply or an additional water supply unless its plans therefore have been approved by the Commission (N. Y. Conservation Law § 521). The municipality is required to make its application for approval in writing and the Commission, after public notice, must hold a public hearing at which evidence is taken in support of the application and in opposition thereto. The Commission is required to determine, among other matters, whether the plans are justified by public necessity *(id.,* § 523).

In accordance with these statutory regulations, the City of New York on January 30, 1950, filed with the Commission its application for approval of its plans to carry out the so-called Third Stage development of its Delaware River project. This development calls for the construction of a storage reservoir on the West Branch of the Delaware River at Cannonsville of a capacity, sufficient to provide a dependable yield of approximately 388 million gallons of water daily. The Commission held public hearings on the application throughout the spring and summer of 1950 at which much evidence, both in support and in opposition to the project, was received in the record. On November 14, 1950, the Commission rendered its decision approving, with certain modifications and on certain conditions, the plans of the City of New York (A copy of the Commission's decision is printed as Exhibit B, appended to the instant petition of the City of New York, pp. 16-42. Page references made herein are to said Exhibit B).

In its decision the Commission found:

> "21. The officials of the city are aware that, before any additional water may be secured from the Delaware river basin, the city must apply to and secure

from the Supreme Court of the United States a modification of the decree issued by that court which limited diversions from such basin by the city to an amount not in excess of 440 million gallons daily. The city, however, is of the opinion that the prior consent and approval of this Commission for the use of these additional waters are prerequisites to its application to that court.

"22. The Commission, in turn, is fully cognizant of the limitations imposed upon the city and the State by the Supreme Court and entertains this application for the project now proposed with complete respect for the decree both in letter and in spirit. The action of the Commission hereon must, of necessity, be subject to the limitations imposed by that court and does not intend to purport to permit diversions in excess of 440 million gallons daily unless and until the decree of the Supreme Court is modified to permit any excess above the said amount. Thereafter, this action shall be effective only within such new limitations as might be fixed by that court." (pp. 25, 26)

On the basis of proof before it, the Commission found that the existing city-owned sources of supply provide an estimated safe yield of about 1,000 million gallons daily while the average demand has been approximately 1,200 million gallons daily (Finding 7, p. 21); that the normal consumption of water in the City by 1960 will be about 1,440 million gallons daily and that at that time the dependable safe yield from the present system, plus the project as authorized by the decree of this Court, will be approximately equal to the demand (Finding, p. 24); that the City should take immediate steps to acquire and develop an additional suitable source of supply in order that it will be in a position to meet demands in the years subsequent to 1960 (Finding 18, p. 24); that the project to develop the West Branch of the Delaware would provide sufficient additional suitable water to meet the future needs,

estimated at 1,800 million gallons daily, of the City to at least the year 1980 (Finding 29, p. 27); that the proposed project provides the best source of supply of raw water available to the City at the most economical cost (Finding 44, pp. 31, 32).

In its decision of approval of the project the Commission imposed the following condition:

> "A. This decision and approval shall have no force and effect until and unless the City of New York has applied to and secured from the United States Supreme Court a modification of its decree in New Jersey v. New York *et al.*, rendered on May 25, 1931 and reported in 283 U. S. 805, in which the city is restrained from diverting from the Delaware River or its tributaries to the city's water supply system water in excess of 440 million gallons daily. Thereafter this decision and approval shall be effective only within the limitations which that court might impose." (p. 36)

Approximately one-half the population of the entire State of New York is dependent for its water supplies on the New York City System. A critical need for haste on the part of the City in proceeding with plans to insure a supply sufficient to meet its future needs is clearly apparent. The Delaware River and its tributaries can provide sufficient water to meet these needs under a project for the proper conservation, storage and release of flood waters. The carrying out of the proposed project of the City of New York, under proper regulation, will work no harm to the downstream States, their municipalities and citizens. The modification of the formula for release waters, as requested by the City of New York, will enure to the benefit of the States, municipalities and to the users of the waters of the Delaware River.

In conformity with its responsibilities to safeguard the health and welfare of its citizens, the State of New York supports the petition of the City of New York and urges that the relief prayed for by the City of New York be granted.

April 22, 1952.

Respectfully submitted,

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